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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,925	02/05/2007	Hugh Fisher	28125-4	1156
21130 7590 06/17/2010 BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP ATTN: IP DEPARTMENT DOCKET CLERK 200 PUBLIC SQUARE SUITE 2300 CLEVELAND, OH 44114-2378				
EXAMINER				
GITLIN, MATTHEW J				
ART UNIT		PAPER NUMBER		
3635				
NOTIFICATION DATE		DELIVERY MODE		
06/17/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@beneschlaw.com

Office Action Summary

Application No.

10/566,925

Applicant(s)

FISHER, HUGH

Examiner

Matthew J. Gitlin

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10 and 38-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10 and 38-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment filed 03/22/2010 has been entered. The previous Drawing Objections and 35 U.S.C. 112, 2nd Paragraph rejections have been overcome by the current amendments. Claims 1 and 6-7 have been amended and Claims 38-43 are newly presented. Currently, Claims 1-07, 10, and 38-43 are pending.

Response to Arguments

2. Applicant's arguments filed 03/22/2010 have been fully considered but they are not persuasive.

3. Applicant contends that it would not be obvious to form the blank of Crowder (US 3,368,316) from sheet metal. Applicant first admits that it may be obvious to select a known material on the basis of its suitability for the intended use as a matter of design choice, but later contends that forming the blank of Crowder from sheet metal would render it unsuitable by removing the ability to be quickly and simply assembled and disassembled for storage.

4. This contention is not persuasive since Applicant has not set forth any valid reasons why forming the blank from sheet metal would render the block unsuitable. As stated in the previous rejection, "within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (**In re Leshin, 125 USPQ 416**) and for the inherent material properties such as being inexpensive, easy to manufacture and being lightweight." The examiner contends that the inherent material properties of sheet metal do in fact support this conclusion. Alone, the light weight property of sheet metal would make the blank easy to assembly and disassembly.

5. Since Applicant has not presented any other arguments as to the differences in structure between the cited prior art and the present invention, this rejection is upheld below.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

7. (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 1-7, 10 and 38-43** are rejected under 35 U.S.C. 103(a) as being unpatentable over Crowder (US 3,368,316).

9. **Claim 1;** Crowder discloses a blank (**Fig. 4**) for forming a building element (**Fig. 5**), the blank comprising: an elongate body portion (**Combination of adjacent panels 52 in Fig. 4**) having first (**Left end, Fig. 4**) and second ends (**Right end, Fig. 4**) and a plurality of transverse fold lines (**56**) which divide the body portion into a plurality of panels (**52**), the panels each having first (**Left edges**) and second (**Right edges**) longitudinal edges; one or more first tab members (**62**) extending from the first end of the body portion; and one or more first apertures (**64**) adjacent the second end of the body portion; wherein each of said plurality of panels has at least one second tab (**66**) extending from said first longitudinal edge and a side flange portion (**74 and 76**) adjacent said second longitudinal edge, and wherein each side flange portion is provided with at least one second aperture (**78**).

Crowder does not expressly disclose wherein the blank is formed from sheet metal or formed from sheet plastics.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to try and provide the blank of Crowder with the blank being formed of sheet metal or sheet plastics, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (**In re Leshin, 125 USPQ 416**) and for the inherent material properties such as being inexpensive, easy to manufacture and being lightweight.

10. **Claim 2;** Crowder discloses wherein each side flange portion is divided from its respective panel by a longitudinally extending fold line (**58**) which extends along the length of the body portion (**Fig. 4**), and wherein the side flange portions are adapted to be folded substantially perpendicular to their respective panels (**Fig. 5**).

11. **Claim 3;** Crowder discloses wherein the body portion has an end flange portion (**60**) adjacent the second end thereof, the at least one first aperture being formed in the end flange portion (**Fig. 4**).

12. **Claim 4;** Crowder discloses wherein the end flange portion is divided from the body portion by one of the plurality of transverse fold lines (**56, Fig. 4**), and wherein the end flange portion is adapted to be folded substantially perpendicular to the body portion (**Not shown in Fig. 5, but capable of being folded any angle**).

13. **Claim 5;** Crowder discloses wherein one or more of the panels includes a strengthening formation (**66**) thereon.

14. **Claim 6;** Crowder discloses wherein one or more of the panels is provided with an additional aperture (**Perforations of 56**).

15. **Claims 7 and 10;** Crowder discloses wherein the building element is a building block (**Fig. 5**).

16. **Claim 38;** Crowder discloses a building element (**Fig. 4**) comprising: an elongate body portion formed from a plurality of integrally formed panels (**Combination of adjacent panels 52 in Fig. 4**), each panel being folded relative to an adjacent panel along a fold line to form a substantially cuboidal body (**Fig. 5**) said body portion having first (**Left end, Fig. 4**) and second ends (**Right end, Fig. 4**) and a plurality of transverse fold lines (**56**) which divide the body portion into a plurality of panels (**52**), the panels each having first (**Left edges**) and second (**Right edges**) longitudinal edges; one or more first tab members (**62**) extending from the first end of the body portion; and one or more first apertures (**64**) adjacent the second end of the body portion; the first tab member and first aperture engaging with one another to secure the first and second panels together (**62 and 64 at opposite ends, Fig. 4**); wherein each of said plurality of panels has at least one second tab (**66**) extending from said first longitudinal edge and a side flange portion (**74 and 76**) adjacent said second longitudinal edge, and wherein each side flange portion is provided with at least one second aperture (**78**).

Crowder does not expressly disclose wherein the blank is formed from sheet metal or formed from sheet plastics.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to try and provide the blank of Crowder with the blank being formed of sheet metal or sheet plastics, since it has been held to be within the general skill of a worker in

the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (**In re Leshin, 125 USPQ 416**) and for the inherent material properties such as being inexpensive, easy to manufacture and being lightweight.

17. **Claim 39;** Crowder discloses wherein the body portion has an end flange portion (**60**) adjacent the second end thereof, the at least one first aperture being formed in the end flange portion (**Fig. 4**).

18. **Claim 40;** Crowder discloses wherein the end flange portion is divided from the body portion by one of the plurality of transverse fold lines (**56, Fig. 4**), and wherein the end flange portion is adapted to be folded substantially perpendicular to the body portion (**Not shown in Fig. 5, but capable of being folded any angle**).

19. **Claim 41;** Crowder discloses wherein one or more of the panels includes a strengthening formation (**66**) thereon.

20. **Claim 42;** Crowder discloses wherein one or more of the panels is provided with an additional aperture (**Perforations of 56**).

21. **Claim 43;** Crowder discloses wherein the building element is a building block (**Fig. 5**).

Conclusion

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Gitlin whose telephone number is (571)270-5525. The examiner can normally be reached on Monday - Friday (7:30am-5:00pm EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571)272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. J. G./
Examiner, Art Unit 3635

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/Robert J Canfield/

for R. Chilcot, SPE of Art Unit 3635